

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
AT&T Corporation)	
)	
Petition for Rulemaking to Reform)	RM No. 10593
Regulation of Incumbent Local Exchange)	
Carrier Rates for Interstate Special)	
Access Services)	
_____)	

**REPLY COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA),¹ through the undersigned and pursuant to Federal Communications Commission (FCC) Rules 1.415 and 1.419,² hereby provides reply comments to AT&T Corporation's (AT&T) Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services (Petition). Pursuant to section 1.401 of the FCC's rules,³ the FCC now seeks reply comments on AT&T's Petition.

SUMMARY

AT&T in its Petition claims that large incumbent local exchange carriers (ILECs) retain market power and are the dominant providers of special access services.⁴ AT&T claims that the

¹ USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

² 47 C.F.R. §§ 1.415 and 1.419.

³ 47 C.F.R. § 1.401.

⁴ Special access is defined as "a variety of services and facilities which constitute the local portion of certain interstate telecommunications lines." *See Review of section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, UNE Rebuttal Report 2002, CC Docket No. 01-338, Report Prepared for and Submitted by BellSouth, SBC, Qwest, and Verizon, V-18, (April 2002) (UNE Rebuttal Report) (citing *Investigation of Special Access Tariffs of Local Exchange Carriers*, 8 FCC Rcd 4712, ¶ 2 (1993)). Special access is the provisioning of "private lines" that are facility or network transmission capacity that is dedicated to the use of an individual

FCC's existing rules have exacerbated the market power of ILECs which has led to unreasonable rates for interstate special access. AT&T wishes to resolve this issue by having the FCC initiate a rulemaking to reform regulation of price cap ILEC rates for interstate special access services. For the reasons set forth below, USTA disagrees with AT&T.

DISCUSSION

USTA disagrees with interexchange carriers (IXCs), competitive local exchange carriers (CLECs) and Internet service providers (ISPs) in this proceeding that special access pricing flexibility has led to inflated rates and anticompetitive behavior by incumbent local exchange carriers (ILECs). In addition, we believe that IXCs and CLECs are taking specific aim at the bell operating companies (BOCs) at a time when the BOCs are beginning to enter the lucrative business communications market because they can now offer the total suite of services. Finally, USTA contends that the interim relief that AT&T seeks is punitive in nature and unlawful under section 205 of the Communications Act of 1934, as amended.⁵

USTA agrees with Qwest Communications International Inc. (Qwest) that the FCC's *Price Cap Performance Review for Local Exchange Carriers* proceeding (*Pricing Flexibility Order*)⁶ "established a framework to provide price cap LECs with pricing flexibility for their special access services in areas where competitive triggers have been met."⁷ In the *Pricing Flexibility Order*, the FCC determined that it would allow ILECs greater pricing flexibility as

customer. *Id.* "These dedicated facilities typically 'run directly between the end user and the [interexchange carrier's] point of presence (POP),' or directly between end user locations." UNE Rebuttal Report at V-18 (citing *Pricing Flexibility Order* at ¶ 8. When ILECs provide special access circuits to interexchange carriers, the ILECs use a combination of local loops and interoffice transport and typically must build those circuits from the ground up.⁵ 47 U.S.C. § 205.

⁶ *Price Cap Performance Review for Local Exchange Carriers*, Fifth Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-262, 14 FCC Rcd. 14221 (rel. Aug. 27, 1999) (*Pricing Flexibility Order*) *aff'd*, *WorldCom v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).

⁷ Comments of Qwest Communications International Inc. at iii (Qwest).

they face increasing competition.⁸ The FCC adopted regulatory relief for ILECs that met “current market conditions and do not require a further competitive showing.”⁹ The FCC adopted requirements that ILECs make “competitive showings,” or satisfy “triggers,” to demonstrate that market conditions warranted the relief.¹⁰

USTA agrees with Verizon Telephone Companies (Verizon) that vigorous competition exists in the special access market.¹¹ We also agree with Verizon, SBC Communications Inc. (SBC), BellSouth Corporation (BellSouth) and Qwest that competitive local exchange carriers (CLECs) are significant suppliers of special access service.¹² USTA contends that CLECs have made significant inroads into the special access market and account for about 36 percent¹³ of all special access revenue, “which is significantly larger than their share of the local exchange market as a whole.”¹⁴ In addition, ILEC competitors have “built more than 1800 alternative fiber networks in the top 150 MSAs, have collocated in wire centers housing much more than half of special access demand, and have deployed links to at least 30,000 buildings nationwide (and likely a far greater number).”¹⁵ Moreover, AT&T and other telecommunications carriers are frequently using their own or third-party facilities in lieu of ILECs’ special offerings.¹⁶

⁸ *Pricing Flexibility Order* at ¶ 67.

⁹ *Id.* at ¶ 68.

¹⁰ *See Id.* (stating that the FCC adopted a pricing flexibility framework that relies on a two-phase approach). *Id.* In order for a price cap ILEC to obtain Phase I relief, “the incumbent must show that competitors have made irreversible investments in the facilities needed to provide the service at issue, thus discouraging incumbent LECs from successfully pursuing exclusionary strategies.” *Id.* In order to receive Phase II relief, “which allows LECs to raise and lower rates, the incumbent must demonstrate that competitors have established a significant market presence in the provision of the services at issue.” *Id.* The FCC determined that the availability of alternative providers should ensure just and reasonable rates. *Id.*

¹¹ Verizon Telephone Companies at 2.

¹² *See generally* Comments of Verizon, SBC Communications Inc. (SBC), BellSouth Corporation (BellSouth) and Qwest.

¹³ Verizon at 2.

¹⁴ UNE rebuttal Report at V-20.

¹⁵ Verizon at 1.

¹⁶ *Id.*

CompTel erroneously claims that ILECs are earning “supracompetitive profits” in the provisioning special access services.¹⁷ We agree with BellSouth that regulatory earnings have no significance upon market power.¹⁸ “All that earnings show is how successful a price cap carrier has been in light of the price limitations,” which has “nothing to do with whether rates are just and reasonable.”¹⁹ In addition, Verizon correctly states that {T}he real story is that the growth in demand stems largely from tremendous increase in data and Internet traffic, not the use of special access to provide local service.²⁰ Likewise, CLECs as providers of special access have increased profits stemming from Internet traffic.²¹

USTA agrees with SBC that “AT&T now wants its special access – services used exclusively to serve larger business customers that have been subject to growing competition for almost twenty years – re-priced at TELRIC.”²² In regards to the local market, “AT&T’s complaint is with the use and commingling restrictions that apply to UNEs.”²³ AT&T contends, that “because of these restrictions, CLECs cannot connect their transport or switch facilities except by buying special access rather than UNEs priced at TELRIC rates.”²⁴

USTA agrees with BellSouth that the access market is separate and distinct from the local exchange market. In order for TELRIC pricing to be considered by the FCC, “the Commission must conduct a separate analysis focusing on special access services marketplace.”²⁵ Currently, the customer base for special access services is composed of large entities that are located in densely populated geographic areas, which is decidedly different than mass market local

¹⁷ Comments of the Competitive Telecommunications Association at 1 (CompTel).

¹⁸ BellSouth at 2 (BellSouth).

¹⁹ *Id.*

²⁰ Verizon at 28.

²¹ *Id.*

²² SBC at 2.

²³ BellSouth at 16.

²⁴ *Id.*

²⁵ *Id.*

exchange services that states regulate under TELRIC. Moreover, the special access market is thriving. Thus, we believe that there is no reason for the FCC to even consider contemplating TELRIC pricing for special access.

Moreover, AT&T and other IXC's currently occupy "a dominant and growing position in the enterprise segment of the business market, which contains the principal customers of special access and other services for which special access is an input, and it expects rapidly to become more entrenched."²⁶ In fact, in the WorldCom bankruptcy proceeding, business customers have informed the court that "Sprint, AT&T and WorldCom account for over 90% of enterprise telecommunications usage and are widely viewed as the only interexchange carriers capable of providing the full suite of network services required by major corporations."²⁷ We concur with Verizon that the only hope for competition in the corporate telecommunications market resides with the BOCs.

Essentially, AT&T would have the FCC look towards regulations of yesteryear in order to prevent ILECs from fairly competing in the business communications marketplace. USTA believes that this is just plain wrong. Consequently, we believe that AT&T's reason for calling into question pricing flexibility has nothing to do with promoting competition in the special access market, but everything to do with creating anti-competition in the lucrative business communications market.

Finally, USTA believes that the interim relief that AT&T requests pending the completion of this proceeding would financially disadvantage and would be anti-competitive for ILECs. AT&T states that "targeting the special access rates at an 11.25% return on an interim basis is necessary to align prices more closely with what would be expected in a

²⁶ Verizon at 5.

²⁷ *Id.*

competitive market (and, indeed, with what was expected when the Commission granted pricing flexibility).”²⁸ We agree with Sprint that “AT&T’s proposal has a punitive cast which makes no sense given that the ILECs, including BOCs, do not appear to have acted outside the rules as established by the Commission’s Order, which was affirmed by the Court of Appeals.”²⁹

USTA believes that law and equity requires that the FCC determine whether the special access rates are just through investigation. We agree with both Sprint and Verizon that to re-price “special access in Phase II areas to earn no more than 11.25 percent would require the Commission to find, following a represcription hearing under Section 205, that all existing rates in those areas are unreasonable.”³⁰ Moreover, we believe that for the FCC to place a moratorium on ILECs who have been working towards compliance under the FCC’s rules since 1999 is unjust and unreasonable. USTA agrees with Verizon that “{D} is continuing the ability to petition for pricing flexibility in additional areas would be unquestionably arbitrary in light of the significant and growing competition.”³¹ Thus, USTA contends that AT&T’s interim request for relief pending completion of this rulemaking should be denied.

CONCLUSION

It has only been two years since the Court of Appeals in *WorldCom v. FCC*, 238 F.3d 449 (D.C. Cir. 2001) (WorldCom) unanimously upheld the FCC’s *Pricing Flexibility Order*. In such a relatively short period of time, AT&T again seeks to repeal the *Pricing Flexibility Order*. As the statistics herein show, we contend that the special access market is competitive and thriving. Thus, for the FCC to entertain AT&T’s Petition would be counterintuitive given the *WorldCom* decision and the highly competitive special access marketplace that exists today.

²⁸ AT&T Petition at 39

²⁹ Comments of Sprint Corporation at 8.

³⁰ *Id.* at 7; Verizon at 5.

³¹ Verizon at 6.

For the reasons set forth above, USTA opposes AT&T's Petition and the interim relief sought by AT&T pending the completion of this proceeding. Accordingly, AT&T's Petition should be denied.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION



By: _____

Lawrence E. Sarjeant
Indra Sehdev Chalk
Michael T. McMenamin
Robin E. Tuttle

Its Attorneys

1401 H Street, NW, Suite 600
Washington, D.C. 2005
(202) 326-7300

January 23, 2003